

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)

IN RE: * CASE No.: 08-35653-KRH
CIRCUIT CITY STORES, INC., *et al.*, * (CHAPTER 11)
DEBTORS. * (JOINTLY ADMINISTERED)

* * * * *

**RESPONSE OF TOSHIBA AMERICA INFORMATION SYSTEMS, INC. TO DEBTORS’
THIRTY-NINTH OMNIBUS OBJECTION TO CLAIMS (RECLASSIFICATION TO UNSECURED
CLAIMS OF CERTAIN CLAIMS FILED AS 503(B)(9) CLAIMS FOR GOODS RECEIVED
BY THE DEBTORS NOT WITHIN TWENTY DAYS OF THE COMMENCEMENT OF THE CASES)**

Toshiba America Information Systems, Inc. (“TAIS”), by its attorneys, files this response to the *Debtors’ Thirty-ninth Omnibus Objection to Claims (Reclassification to Unsecured Claims of Certain Claims Filed as 503(B)(9) Claims for Goods Received by the Debtors Not Within Twenty Days of the Commencement of the Cases)* [Docket No. 4881] (the “Objection”), and states:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334. This is a contested matter under Federal Rules of Bankruptcy Procedure 6006(b) and 9014, and is a core proceeding under 28 U.S.C. § 157(b).
2. The Debtors commenced this bankruptcy case on November 10, 2008 (the “Petition Date”) by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

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3. TAIS timely filed a Section 503(b)(9) Claim Request Form with the Debtors' claims processing agent, Kurtzman Carson Consultants LLC, on December 19, 2008, asserting a claim for administrative expenses under § 503(b)(9) of the Bankruptcy Code in the amount of \$5,043,759.28 (the "Claim"). The Claim was assigned claim number 1319.

4. In their Objection, the Debtors assert that the Claim is misclassified, and seek to reclassify \$257,427.72 of the Claim as a general unsecured, non-priority claim. The balance of the Claim, \$4,786,331.56, will remain an administrative claim under § 503(b)(9).

5. As the basis for their objection to the Claim, the Debtors assert that the Claim does not satisfy the requirements of § 503(b)(9), in that certain of the goods were received by the Debtors outside of the statutory period of 20 days that preceded the Petition Date. See Objection, at 7. More specifically, the Debtors allege that the goods represented by invoice number 21040322, in the amount of \$257,427.72, were received by the Debtors outside of the statutory period. Id. at 55.

6. Upon reviewing its records, TAIS has determined that the goods represented by invoice number 21040322, in the amount of \$257,427.72, were received by the Debtors outside of the statutory period of 20 days that preceded the Petition Date.

7. TAIS has amended its Claim to properly characterize its claim under § 503(b)(9) of the Bankruptcy Code. A copy of the amended Claim, without supporting documentation due to its size, is attached hereto as Exhibit 1 and incorporated herein by reference.

8. TAIS respectfully requests that the Court treat this Response as a written memorandum of points and authorities or waive any requirement that this Response be accompanied by a written memorandum of points and authorities as described in Local Bankruptcy Rule 9013-1(H).

WHEREFORE, Toshiba America Information Systems, Inc. respectfully requests that
this Court:

- A. Sustain the Debtors' Objection;
- B. Modify claim number 1319 filed by TAIS to reflect a claim under §
503(b)(9) in the amount of \$4,786,331.56 and an unsecured claim in the
amount of \$257,427.72; and
- C. Provide such other and further relief as the Court determines to be
necessary.

/s/ Jeremy S. Friedberg
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 2009, a copy of the foregoing, along with attached exhibit, was served *via* first-class mail, postage prepaid, and, if the recipients are properly registered, *via* the Court's CM/ECF system, on:

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